IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8154 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYSHREE RAJENDRA SHROFF

Versus

APPROPRIATE AUTHORITY (INCOME TAX)

Appearance:

MR JP SHAH for Petitioners

MR MIHIR JOSHI FOR MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 05/09/2000

C.A.V. JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.

#. Under Chapter XX-C of the Income-Tax Act, 1961 (for short `the Act'), the Central Government, through the Appropriate Authority, has power to make preemptive purchase of any immovable property, where it finds that the apparent consideration of any proposed transfer of the said property is less than its real value and there is intention to evade payment of tax.

#. In exercise of powers contained in Section 269UD(1) of the Act, the Appropriate Authority, as defined in Section 269UB, passed the impugned order dated 17-5-2000 of preemptive purchase of Plot No. 38 out of Survey No. 593, City Survey No. 3390, Munjeri, Bibwewadi in the layout of Sindh Hindu Co-operative Housing Society Ltd., Pune. The Appropriate Authority, by the impugned order, held that the property above described having a fair market value of Rs.1.2 crores was agreed to be sold by Mrs. Roma Motiram Chandiramani (petitioner no. 4) in favour of Smt. Jayshree Rajendra Shroff and two other members of her family (petitioners nos. 1, 2 and 3) for a paltry sum of Rs.61 lakhs. The Appropriate Authority, after granting opportunity of hearing to the transferor and the transferees, found no justification in their stand that the agreed amount of consideration of the property involved was less than the market price, because one Shri M.K. Advani, who was appointed as caretaker of the property by the transferor, started asserting rights of a lessee, on the basis of his long possession of the property.

#. The Appropriate Authority had also issued a notice of preemptive purchase to said Shri Advani, who is admittedly in actual occupation of the property. Shri Advani has sent a formal reply of the notice to the Appropriate Authority stating therein that he is in possession of the property in question since 1984 as a caretaker, and under an agreement between him and the landlord, his monthly salary as caretaker was being adjusted towards the rent of the property in his use and actual occupation. The Appropriate Authority, thereafter, called upon Shri Advani by notice dated 21-2-2000 to produce necessary evidence in support of his claim of status as a lessee of the property. The aforesaid notice was not responded to by the so called lessee Shri Advani, and therefore, the Appropriate Authority communicated to him the following order:-

"This Authority, therefore, proposes to hold that you have no right/interest in the property and that the property will vest in the Central Government free from any encumbrance as far as

you claim is concerned, after an order u/s. 269(UD(1) of the I.T. Act is passed for preemptive purchase of the property. ...."

In view of no reply of Shri Advani, the Appropriate Authority came to the conclusion as under:-

"From the facts and circumstances it is clear that Shri Advani does not have tenancy rights. His claim that he is appointed as a caretaker and that the salary as a caretaker is being adjusted towards the rent of the property is ill-founded and not backed by any evidence."

#. The Appropriate Authority, thus, came to the conclusion that Shri Advani is in occupation as caretaker of the property and can claim no rights of the lessee of the property and the apparent consideration in the agreement of sale entered into between the transferor and the transferees is less than the real value of the property under consideration. The Appropriate Authority, therefore, by the impugned order dated 17-5-2000 (Exh. I) made preemptive purchase of the property for the apparent consideration stated in the agreement and directed that the property shall vest in the Central Government in terms of Section 269UE of the Act. After passing the aforesaid order of preemptive purchase and declaring the property to have vested in the Central Government, the Office of the Chief Commissioner of Income-Tax wrote a letter dated 16-6-2000 to the transferor (petitioner no. 4) calling upon her that in terms of the agreement of sale dated 31-10-1999 and particularly clause (3) of the said agreement, as a vendor, she is bound to handover the peaceful and vacant possession of the property to the purchaser, which, in case of preemptive purchase, to the Central Government. The transferor was, therefore, called upon to handover the vacant and peaceful possession of the property, as a result of preemptive purchase to the Central Government. To the said letter, a reply is sent by the transferor informing that Shri Advani, the alleged caretaker of the property has instituted a civil suit registered as Special Civil Suit No. 926 of 2000 in the Court of Civil Judge (S.D.), Pune, against the transferor and the Appropriate Authority, claiming therein status of a lessee of the property and seeking a permanent injunction, restraining the transferor and the Appropriate Authority from enforcing the order of preemptive purchase passed under Section 269UE of the Act. The transferor in his reply also stated that since he had received full amount of agreed consideration from

the transferees, the Central Government should make the payment of preemptive purchase to the transferees. After receiving a reply from the transferor to the notice demanding delivery of vacant possession of the property, and on knowing the fact that Shri Advani, the alleged caretaker has filed a civil suit in Civil Court at Pune, the Office of the Chief Commissioner by the impugned letter dated 12-7-2000 (Exh. I) informed the transferor and to the transferees that the purchase consideration amounting to Rs.58,45,441/has been deposited in the account of the Appropriate Authority, Ahmedabad on 29-6-2000.

#. By this joint petition filed by the transferor and the transferees, the order dated 17-5-2000 passed under Section 269UD(i) of the Act of preemptive purchase of the property in question under consideration and the impugned communication dated 12-7-2000 (Exh. Q) depositing the purchase consideration in the account of the Appropriate Authority, under sub-section (2) of Section 269UG of the Act have been challenged.

#. Before considering the grounds of challenge made to the impugned order and the notice of deposit of the purchase consideration, it is necessary to examine the relevant provisions on preemptive purchase contained in Chapter XX-C of the Act. Section 269UA provides definitions of expressions `agreement for transfer', `apparent consideration', `Appropriate Authority', `immovable property' The relevant sub-clause (e) of said Section which is relevant for our purposes defines the word "person interested" as under:-

> "269UA(e) `person interested', in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the consideration payable on account of the vesting of that property in the Central Government under this Chapter."

(underlining for emphasis)
As required by Section 269UC, any proposed transfer of property in specified area can be effected only after service of notice by transferor and transferee in the prescribed Form No. 37-I, to afford an opportunity to the Appropriate Authority, to make, if necessary, an order of preemptive purchase.

Section 269UD contains the procedure which has to be followed by the Appropriate Authority before making an order of preemptive purchase. The procedure requires giving of notice and an opportunity of hearing to the

transferor and the transferee as also to the `person interested' e.g.. one in actual occupation of the property. The relevant provision contained in Section 269UD(1A) reads as under:-

"269UD(1A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property."

There is no dispute that there has been a compliance of procedure contained in sub-section (1A) of Section 269UD of the Act as transferor, transferees and Shri Advani, the person in actual occupation of the property were granted of opportunity of being heard.

Section 269UE contains the provision of vesting of property in Central Government. The Section in its entirety is relevant for the purpose of this case as arguments were advanced by the counsel for the petitioners and on behalf of the Central Government differently on the interpretation of the same:-

Vesting of property in Central Government.

"269UE.(1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of section 269UC:

Provided that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in the said property, under sub-section (1A) of section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to the void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold interest.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-section (1) of section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the appropriate authority in this behalf within fifteen days of the service of such order on him:

Provided that the provisions of this sub-section and sub-sections (3) and (4) shall not apply where the person in possession of the immovable property, in respect of which an order under sub-section (1) of section 269UD is made, is a bona fide holder of any encumbrance on such property or a bona fide lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to sub-section (1) and such person is eligible to continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.

(3) If any person refuses or fails to comply with the provisions of sub-section (2) the appropriate authority or other person duly authorised by it under that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(4) Notwithstanding anything contained in sub-section (2), the appropriate authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person.

(6) Where an order under sub-section (1) of section 269UD is made in respect of an immovable

property, being rights of the nature referred to in sub-clause (ii) of clause (d) of section 269UA, such order shall have the effect of -

(a) vesting such right in the Central Government; and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made.

(7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed, have been vested in the Central Government under sub-section (6), the provisions of sub-sections (1), (2) (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be."

Section 269UF requires, in the event of passing of an order of preemptive purchase and vesting of property in the Central Government, to pay, by way of consideration, for such purchase an amount equal to the amount of apparent consideration.

Section 269UG is also reproduced in full hereunder being relevant for considering the contentions advanced by the parties on the action of the Central Government in depositing the purchase consideration with the Appropriate Authority instead of making payment of the same to the transferor or to the transferee:-

Payment or deposit of consideration.

"269UG.(1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE:

Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Gift-tax Act, 1958 (18 of 1958) the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable under section 269UF,

the appropriate authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration.

(2) Notwithstanding anything contained in sub-section (1), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.

(3) Notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein:

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration has been deposited with the appropriate authority under this section, the appropriate authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be."

What is to be noted is that under sub-section (2) of section 269UG, the purchase consideration can be deposited by the Central Government with the Appropriate Authority within a specified period only "if any dispute arises as to the apportionment of the amount of

consideration amongst persons claiming to be entitled thereto"

Under Section 269UH where the Central Government fails to tender or deposit the purchase consideration as required by sub-section (1) or subsection (2) and (3) of Section 269UG, the order of purchase of the immovable property by the Central Government made under sub-section (1) of Section 269UD shall stand abrogated and the immovable property shall stand revested in the transferor.

Section 269UH with the proviso thereunder is also relevant and is reproduced hereunder:

Re-vesting of property in the transferor on failure of payment or deposit of consideration.

"269UH.(1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand revested in the transferor after the expiry of the aforesaid period:

Provided that where any dispute referred to in sub-section (2) or sub-section (3) of section 269UG is pending in any court for decision, the time taken by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of section 269UD is abrogated and the immovable property revested in the transferor under sub-section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shall -

(a) deliver a copy of the declaration to the persons mentioned in sub-section (2) of section 269UD; and

(b) deliver or cause to be delivered possession of the immovable property back to the transferor, or, as the case may be, to such other person as was in

possession of the property as the time of its vesting in the Central Government under section 269UE."

#. Learned counsel Shri J.P. Shah appearing for the petitioners, in assailing the impugned order of preemptive purchase and the direction of deposit of purchase consideration, has raised two grounds. Firstly it is urged that in making the order of preemptive purchase and in coming to the conclusion that apparent consideration does not represent the real market value of the property, the Appropriate Authority should not have lost sight of the fact, that the property was in actual occupation of Shri Advani, who was merely appointed as caretaker of the property, but had started asserting right of a lessee.

#. The second ground urged with sufficient force and in detail is that there does not exist any dispute as to the apportionment of the amount of consideration within the meaning of sub-section (2) of Section 269UG and non-payment of the amount of consideration either to the transferor or to the transferee and illegal deposit of the same has the consequence of `abrogation' of the order of preemptive purchase under Section 269UH of the Act and the petitioners are entitled to a declaration of abrogation in terms of sub-section (2) of Section 269UH and for restoration of possession of the property to the transferor or the transferee.

#. It is contended on behalf of the petitioners that as a result of preemptive purchase, the property vest in the Central Government with full powers to it to take possession of the property, if necessary, by use of police force under sub-section (4) of Section 269UE, and merely because Shri Advani, the alleged caretaker asserts rights of lessee and has filed a Suit, is no ground not to pay the purchase consideration to the transferor or the transferee and deposit the amount with the Appropriate Authority. It is submitted that Division Bench decision of this Court in the case of Hotel Mardias Private Limited v. Union of India and others (1996) 220 ITR 94 is directly on the point and supports squarely the contention advanced before us. Reliance is also placed in support of the contention on a Single Bench decision of Calcutta High Court in Madhusudhan Das and others v. Appropriate Authority of Income-Tax and others (1997) 223 ITR 351.

##. Learned counsel also read certain observations of the Supreme Court in the case of C.B. Gautam v. Union

of India and others (1993) 1 SCC 78 which was relied in Asgar S. Patel and others v. Union of India and others (2000) 244 ITR 713 and another decision of Supreme Court in the case of Prima Realty v. Union of India and Others (1997) 223 ITR 655.

##. We have also heard learned counsel Shri Mihir Joshi appearing for the Central Government and the Appropriate Authority, who took us in detail through the provisions contained in Chapter XX-C and the decisions cited at the Bar. The contention advanced on behalf of the Central Government is that actual occupation of Shri Advani of the property by asserting rights of a lessee and filing a Suit for the purpose as also the inability of the transferor to deliver vacant possession of the property are relevant circumstances which are recognised in the provisions of Sections 269UE and 269UG, to afford a justification for the course adopted of the deposit of the purchase consideration with the Appropriate Authority instead of tendering or paying the same to the transferor or the transferee. Strong reliance has been placed on behalf of the Central Government on the decision of the Supreme Court in the case of C.B. Gautam (supra) and particularly certain observations made therein which we shall deal with in subsequent paragraphs of this judgment. The argument on behalf of the Central Government in substance is that the property vests in the Central Government on preemptive purchase `in terms of the agreement' of sale entered into between the parties. Under the terms of the agreement, the transferor has undertaken to obtain vacant possession of the property and deliver the same to the purchaser. The Central Government which stepped into the shoes of the purchaser can insist on delivery of vacant possession of the property. It is also contended that the actual occupier of the property, who is asserting rights of a lessee in the property, is covered by the definition of expression "person interested" as defined in clause (e) of sub-section (2) of Section 269UA. On vesting of property in Central Government, such lessee can claim only compensation for extinguishment of his rights as lessee, and is entitled to payment from the amount of consideration payable for the purchase of the property. Thus, there exists a dispute as to the apportionment of the amount of consideration between transferor and transferee on one side and Shri Advani, the alleged caretaker claiming leasehold rights on the property on the other. The existence of such dispute which is pending adjudication in civil suit furnishes a valid ground to the Central Government under sub-section (2) of Section 269UG to deposit the purchase consideration with

the Appropriate Authority.

##. So far as the first ground of challenge to the impugned order dated 17-5-2000 (Exh. I) of preemptive purchase is considered, this Court finds no ground to quash the same. After due notice to the transferor, transferees and the person in actual occupation, the Appropriate Authority came to the conclusion that the said occupier Shri Advani failed to substantiate his claim of being a lessee of the property and because of his presence the apparent consideration of Rs. 61 lakhs for sale cannot be accepted to be the real value of the property which is worth Rs.1.2 crores. This court finds that the impugned order of preemptive purchase is not justiciable before this Court on the grounds urged. The Appropriate Authority, after hearing the concerned parties affected by the proposed action, has come to the conclusion on the real value of the property and has negatived the claim of the actual occupant. This Court finds no scope for judicial review of the same.

##. The second ground urged of seeking a declaration or order of `abrogation of the preemptive purchase' due to alleged non-payment of the purchase consideration within the specified period to the transferees or the transferor is concerned, it would require some detailed consideration of the contention advanced on the provisions of the Act.

##. At the outset, it may be stated that the provisions contained in Chapter XX-C, particularly, the provisions in Section 269UE affecting or destroying the rights of a person having encumbrance on the property or leasehold interest, came to be challenged before the Supreme Court in the case of C.B. Gautam (supra). The Supreme Court held that the provisions contained in sub-section (1) of Section 269UE providing for vesting of property in Central Government, on preemptive purchase, free from all encumbrances (as the provision stood then) is liable to be struck down.

##. So far as sub-section (2) of Section 269UE (as it stood then) is concerned, the Supreme Court in the case of C.B.Gautam (supra) read down the provision to validate the same. It was observed:-

"Similarly, sub-section (2) of Section 269UE will be read down so that if the holder of an encumbrance or a lessee is in possession of the property and under the agreement to sell the property does not provide that the sale would be

free of such encumbrances or leasehold interests, the encumbrance holder or the lessee who is in possession will not be obliged to deliver the possession of the property to the Appropriate Authority or any person authorised by it and the provisions of sub-section (3) also would not apply to such persons. If the provisions of Section 269UE are read down in the manner indicated above, then, in our opinion, the provisions of sub-section (6) of that Section do not present any difficulty because the vesting in the Central Government would be subject to such encumbrances and leasehold rights as stated earlier."

##. Relying on the above observations of the Supreme Court in C.B.Gautam's case (supra), on behalf of the Central Government, it is argued that under the sale agreement, in the instant case, the presence of caretaker was not even recognised and the property was sold free from all encumbrances. It was expressly stipulated in the agreement that the transferor will obtain and deliver vacant possession of the property to the transferees.

##. While considering the validity of Section 269UE, as it stood prior to its amendment by Finance Act, 1993 with effect from 17-11-1992, the other ground of challenge to the provision under consideration before the Supreme Court was with regard to the rights of bonafide holders of any encumbrance or lessee of such property. The provision under Section 269UD(1) and (2), as it existed then, was construed harmoniously adopting the principle of reading down the provision to make it valid. It was held by the Supreme Court that such bonafide holders of encumbrance or leasehold rights of the property cannot resist their possession against the Central Government in whom the property vests with right to take possession, if required by force, but, such bonafide holders of encumbrance or leasehold rights would only be entitled to payment of compensation from the amount of purchase consideration payable by the Central Government. The relevant observations of the Supreme Court in the case of C.B. Gautam (supra) contained in paragraphs 38 and 39 which have been read and reread and commented upon by counsel for the parties in their own manner, need full reproduction:-

"38. As we have stated earlier where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such

property under Section 269UD(1) in the said Chapter would result in the said property vesting in the Central Government free of such encumbrances or leasehold interests. In such a case the holders of the encumbrances and leasehold interests would have to obtain their compensation from the amount awarded as the purchase price to the owner of the property. This appears to be a fair construction because in such a case the apparent consideration can be expected to include the value of such leasehold interests or encumbrances. The holders of the encumbrances and leasehold interest which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of sub-section (5) of Section 269UA. In this connection, we may refer to sub-section (5) of Section 269UE which declares that nothing in the said section which deals with the vesting of property in the Central Government shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person. This provision makes it amply clear that in the case we have just referred to, the encumbrance holder or the holder of the leasehold rights could claim the fair value of his encumbrance or the leasehold interest out of the amount paid on account of the purchase price to the owner of the immovable property acquired by the Central Government under Section 269UD.

39. It was urged by learned counsel for the Revenue that in case a view is taken that the expression "free from all encumbrances" should be struck down it would be left open for an intending seller of immovable property to undervalue the property by creating a bogus lease or a bogus encumbrance thereon and this would defeat the purpose for which the Chapter XX-C was introduced. We are unable to agree. If a lease or an encumbrance is found to be bogus it can be treated as of no legal effect and in that event it would not affect any of the rights of the Central Government on the vesting of the property in the event of an order for purchase being made under Section 269UD(1). If it is so considered

necessary the provisions of the Chapter might be so amended as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of Chapter XX-C such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for the Parliament to consider."

##. It appears that after the decision of the Supreme Court in the case of C.B.Gautam (supra), Section 269UE was amended by Finance Act, 1993 with effect from 17.11.1992 for substituting the expression "free from all encumbrances" in sub-section (1) of Section 269UE with the expression" in terms of the agreement for transfer" referred to in sub-section (1) of Section 269UC".

##. Two provisos under sub-section (1) and sub-section (2) were added. Under proviso to sub-section (1) of Section 269UE, the Appropriate Authority has been conferred with the power after giving opportunity of hearing to transferor and transferee as also to any other person claiming right of encumbrance or leasehold interest in the property, to recognise his right or to declare that such encumbrance or leasehold interest is bogus, and therefore void, whereupon the property shall vest in the Central Government with or without such encumbrance or leasehold interest `in terms of the agreement' as the case may be.

##. As the facts have been mentioned above, the Appropriate Authority had issued notices to the transferor, transferee as also to Shri Advani, the alleged caretaker, who asserted leasehold rights in the property. Shri Advani was called upon to substantiate his claim of leasehold right by producing necessary evidence. He failed to produce any such evidence and thereupon the Authority came to the conclusion that Shri Advani cannot be treated to be a bonafide holder of any leasehold interest in the property.

##. Learned counsel appearing for the petitioner contends that as neither the transferor nor the transferee, nor the Appropriate Authority has recognised the status of Shri Advani to be a bonafide holder of leasehold interest in the property, only on the ground of non-delivery of the possession of the property, the purchase consideration could not have been withheld from being tendered or paid to the transferor or transferee, who alone were entitled to receive the same. It is true that after the amendment to sub-section (1) of Section 269UE for the expression "free from all encumbrances" the

expression "in terms of the agreement for transfer" has been substituted with legal result that on preemptive purchase of the property, it vests in the Central Government "in terms of the agreement for transfer". Under the terms of agreement of transfer, the transferor had sold the property with the presence of the caretaker in it, but not recognising his alleged leasehold right or interest. On the vesting of the property on preemptive purchase, Central Government steps into the shoes of the transferee and takes the property in terms of the transfer with the presence of or occupation of the alleged caretaker, who may have been asserting a leasehold right and for that purpose might have filed a civil suit. On the ground of non-delivery of vacant possession by the transferee to the Central Government, the Central Government could not have withheld the payment of amount of purchase consideration to the transferor or transferee. The non-payment of the amount of consideration to transferor or transferee on the alleged ground of non delivery of vacant possession of the property by the transferor to the Central Government, therefore, cannot be supported on the amended provisions of Section 269UE. As has been recognised by the Supreme Court, in the observations quoted above, once the property vests in the Central Government no holder of leasehold right can resist dispossession, as no tenancy rights can be claimed against the Central Government. That apart, the Central Government has extraordinary powers to use force, and if necessary police force, to obtain possession of the property vesting in it on preemptive purchase in accordance with sub-section (3) and sub-section (4) of Section 269UE of the Act. Such extraordinary powers are conferred on the Central Government to obtain possession of the property, if necessary, by evicting from the property the alleged actual occupier of the property. We are informed that although there is a civil suit instituted by Shri Advani, the alleged occupier of the property, seeking permanent injunction against the transferor and the Central Government or the Appropriate Authority, but, no interim or temporary injunction has so far been issued. Even if such injunction is obtained against the Central Government, as the Central Government steps into the shoes of the transferee, it has to oppose the Suit as a party in the civil Court and claim possession and right of entry into the property under the orders of the Civil Court.

##. The decisions of the Division Bench of Gujarat High Court in the case of Hotel Mardias Private Limited (supra) and of Calcutta High Court in the case of

Madhusudhan Das (supra) fully support the contention advanced on behalf of the petitioners and the conclusions reached by us as discussed above.

##. Learned counsel on behalf of the Central Government argues that under one of the specific terms of sale agreement, the transferor has undertaken liability to deliver vacant possession of the property to the transferees and the Central Government on vesting of the property in it, having stepped into the shoes of the transferees, can insist on the transferor to deliver vacant possession before insisting on payment of consideration for preemptive purchase.

##. The above argument ignores the amendments introduced to Section 261UE based on the decision of the Supreme Court in C.B.Gautam's case (supra). On preemptive purchase, the property vests in Central Government "not free from all encumbrances", but, "in terms of the agreement". With the amended provisions contained in Section 269UE, the effect is that the Central Government on vesting of the property in it will be in the same position qua the transferor as the transferees were.

##. The Central Government can enforce the said terms of agreement against the transferor by suing him for possession or taking recourse to its extraordinary powers of taking forcible possession under sub-section (3) or (4) of Section 269UE.

##. Non-delivery of possession in terms of the agreement to purchaser is, however, not a ground permissible for deposit of consideration with Appropriate Authority under any of the sub-sections of Section 269UG.

##. There is no link between the provision contained in Section 269UE(1) regarding vesting of property in Central Government "in terms of the agreement for transfer" and subsection (2) and (3) of Section 269UG permitting deposit of amount of consideration where, there is dispute on its apportionment or entitlement. Non-delivery of possession of property in terms of the agreement to the Central Government as preemptive purchaser is not a permissible ground to deposit the consideration agreed for transfer with the Appropriate Authority.

##. The second limb of the argument and the relief claimed therein of declaring that the preemptive purchase stands abrogated, however, cannot be accepted, for a different reason. As has already been stated, the

contention on behalf of the petitioners is that merely for want of delivery of vacant possession of the property, the payment of purchase consideration cannot be withheld, and its deposit with the Appropriate Authority could not be made, as no dispute exists within the meaning of sub-section (2) of Section 269UG, as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto. Learned counsel submitted that the persons entitled to consideration are transferor and the transferee, and inter se between them, there is no dispute. Admittedly the transferees have already received consideration under the agreement from the transferor. The transferees are, therefore, entitled to receive purchase consideration from the Central Government. The present petition has also been filed jointly by the transferor and the transferees. The argument advanced on behalf of the petitioners is that Shri Advani, who is not recognised as a lessee of the property, either by the parties to the transaction or by the Appropriate Authority, is not a person claiming any entitlement to the amount of consideration for purchase. Therefore, there does not exist any dispute of apportionment of consideration between the transferor, transferees and actual occupier of the property. Sub-section (2) of Section 269UG permitting the Central Government to deposit the amount, therefore, is not attracted to the facts and circumstances of the case. Non-payment of the purchase consideration and deposit of the same contrary to the provisions of sub-section (2) of Section 269UG results in abrogation of the preemptive purchase under Section 269UH of the Act and the petitioner is entitled to a declaration and restoration of possession as provided in sub-section (2) of Section 269UH. The dispute under sub-section (2) and (3) of Section 269UG about apportionment or entitlement to purchase consideration may arise only by actual claims lodged by the parties before the Appropriate Authority or it may arise because of such claims raised in appropriate court.

##. In our considered opinion, the `dispute' referred in sub-section (2) or (3) of the said Section 269UG cannot be given restricted meaning to include only such claims which are raised before the Appropriate Authority. In the instant case, the Appropriate Authority has negatived such claim of the actual occupier by refusing to recognise his status as a bonafide leaseholder, because he failed to substantiate his claim by evidence in pursuance of an express notice served on him. He has, however, filed a civil suit for such claim or status of his being a bonafide leaseholder. In the event of

acceptance of such claim by the civil Court, as held by the Supreme Court in the case of C.B. Gautam (supra), he would not be entitled to protect his possession against the Central Government, but, would nonetheless, be entitled to compensation from the amount of purchase consideration payable by the Central Government to the transferor or transferee. Undoubtedly, therefore, pendency of civil suit has raised a dispute about entitlement of amount of purchase consideration within the meaning of sub-section (2) or (3) of Section 269UG and the Central Government was justified in depositing the amount with the Appropriate Authority instead of tendering or paying the same either to the transferor or to the transferees.

##. The relief claimed under Section 269UH of grant of declaration of `abrogation' of preemptive purchase and the restoration of property, therefore, cannot be granted to the petitioners. In construing Section 269UH and its legal effect, the provisions of Section 269UE, as they stood then, and the interpretation placed on them by the Supreme Court in the case of C.B. Gautam (supra) which resulted into further amendments to the Section with introduction of two provisos in the said Section 269UE, cannot be lost sight of. We have already reproduced the observations and conclusions of the Supreme Court contained in relevant paragraphs of the judgment in C.B.Gautam's case (supra) where sub-section (1) in its part was declared ultravires resulting in substitution for the expression "free from all encumbrances" with the words "in terms of the agreement for transfer". We have also reproduced the paragraph of the said judgment in which sub-section (3) of Section 269UE was `read down' to recognise the right to claim compensation by a bonafide holder of encumbrance or leasehold interest and nullification of the bogus claims of persons claiming such interest or rights.

##. From the observations quoted above in C.B.Gautam's case (supra), the right of a bonafide holder of an encumbrance or leasehold interest to claim compensation from out of the agreed amount of purchase consideration has been recognised and will have to be given effect to. The Appropriate Authority in the Central Government in its communication has expressly referred to C.B.Gautam's case (supra) for adopting the course of deposit of the amount with the Appropriate Government instead of tendering or paying the same to the transferor or the transferee.

##. No doubt, that neither the transferor nor the

Appropriate Authority has accepted the claim of the actual occupant of being a lessee to be bonafide and in fact such claim has been expressly negatived by the Appropriate Authority, after giving notice and hearing to the actual occupier. The actual occupier has, however, instituted a civil suit, claiming declaration of his status as a lessee and also sought injunction against the transferor and the Appropriate Government for enforcing the provisions of Section 269UE of the Act. The actual occupier' who has instituted a civil suit claiming status of a lessee is clearly covered by the definition clause (e) of sub-section (2) of Section 269UA of the Act of being a "person interested". The definition is inclusive of all persons claiming, or entitled to claim and interested in the consideration payable on account of vesting of the property. There is no express provision contained in Chapter XX-C recognising right of an actual occupier or a holder of an encumbrance or leasehold interest in the property to be entitled to claim compensation. But on the basis of the decision of the Supreme Court in C.B.Gautam's case (supra) on the provisions contained in Chapter XX-C (as they stood before amendment) and in view of the amendment subsequently introduced to the provisions in the said Chapter, it has to be held that a bonafide holder of encumbrance or leasehold interest in the property cannot resist his dispossession by the Central Government, but certainly can claim compensation from the amount of purchase consideration payable on the vesting of the property in the Central Government. On the clear interpretation and observations of the Supreme Court in the case of C.B. Gautam (supra), a bonafide holder of an encumbrance or leasehold interest in the property under preemptive purchase would be deemed to be covered by the definition of `person interested', as by virtue of his alleged bonafide claim of leasehold interest, he is entitled to claim compensation from the consideration payable on vesting of the property in the Central Government. Such a person is, therefore, entitled to claim in full or part the amount of consideration. It is true that no such claim for compensation has been laid before the Appropriate Authority by any one. Shri Advani, who asserts rights of a lessee over the property, in response to the notice by the Appropriate Authority, had sent a reply, but failed to substantiate his claim and his claim was, therefore, not recognised by the Appropriate Authority. Shri Advani, the alleged occupier, who is asserting his claim of leasehold right, has however, instituted a civil suit in the civil Court at Pune, which is pending. If he succeeds in the civil suit and obtains a declaration of his status as a lessee,

and may be that he is unable to obtain a permanent injunction against the Central Government from enforcing the provisions of Chapter XX-C against him, he would, nonetheless, on the basis of decision of Supreme Court in the case of C.B. Gautam (supra), would be a person entitled to compensation in full or part from the consideration, for extinguishment of his leasehold rights as against the Central Government. So long as, therefore, civil suit is pending, the dispute within the meaning of subsection (2) of Section 269-UG has arisen as to the amount of consideration payable by the Central Government to the `persons interested' or `persons claiming to be entitled thereto'. Since the dispute with regard to the entitlement to the purchase consideration has arisen, may be, not on account of any claims of the parties interested, i.e., transferor, transferee or the actual occupier, but, because of the pendency of a civil suit for such claim of status of leasehold right in the civil court, the provisions of sub-section (2) of Section 269UG are attracted and the Central Government is fully justified in not tendering or paying the amount to the transferor or transferees but depositing the same with the Appropriate Authority.

##. In coming to this conclusion, we are supported by the observations of the Supreme Court in C.B.Gautam's case (supra) which have been followed in subsequent decision of Supreme Court in the case of Asgar S.Patel (supra). The Division Bench decision of Gujarat High Court in the case of Hotel Mardias Private Limited (supra) and the decision of the Supreme Court in Prima Realty (supra), on which heavy reliance was placed, are distinguishable, so far as the second ground urged for claiming the relief of declaration of abrogation of the preemptive purchase as a result of non-payment but deposit of the purchase consideration in alleged contravention of the provisions of Section 269UG of the Act.

##. The submission made on behalf of the Central Government is reasonable that if the entire amount of purchase consideration is paid to the petitioners and ultimately the civil suit succeeds, it would be difficult, if not impossible, to reclaim the amount from the petitioners. The amount in deposit with the Appropriate Government can be invested in accordance with sub-section (4) of Section 269UG of the Act in Government or other securities so that other benefits and interest may accumulate for being ultimately paid to the parties found entitled to the same.

##. Our conclusion, therefore, is that the Central Government is not justified in withholding from payment the amount of purchase consideration for non-delivery of actual possession of the property by the transferor, after evicting the alleged occupier, but the deposit of the purchase consideration by the Central Government, with the Appropriate Authority pending adjudication of dispute on entitlement of whole or part of purchase consideration as compensation payable to the occupier as a bonafide leaseholder of the property, is not in contravention of any provisions of Chapter XX-C, particularly, Section 269UG. As the Central Government was fully justified in resorting to the provisions of sub-section (2) of Section 269UG and making deposit of the purchase consideration with the Appropriate Authority, the evil consequences against the Central Government contained in Section 269UH of abrogation of preemptive purchase would not ensue to justify grant of relief to the petitioner, in this case, of declaration of abrogation and restoration of possession.

##. As a result of the discussion aforesaid, this petition fails on our conclusion on the second ground urged on behalf of the petitioners. Accordingly, the petition is hereby dismissed.

However, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

After pronouncement, learned counsel appearing for the petitiner prays for maintenance of status quo by the parties to enable it to prefer an appeal against the order. On the request, it is directed that the parties shall maintain status quo for a period of one month.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

[sndevu]